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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,365	03/23/2004	Derek Metcalf	38949/295702	3952

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,365

Applicant(s)

METCALF, DEREK

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004 and 09 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/24/04; 5/30/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

Applicant's election with traverse of Group II, i.e., claims 9-15, in the reply filed on May 9, 2006 is acknowledged. The traversal is on the ground(s) that "examination of the entire application will not impose an undue burden". This is not found persuasive because a general allegation of a search not being burden is not sufficient. Applicant has failed to discuss why the restriction is improper and should not be imposed.

The requirement is still deemed proper and is therefore made FINAL.

Thus, claims 1-18, 16, and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant's election of species (d), i.e., Figures 17 and 18, in the reply filed on May 6, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It is noted that the examiner agrees with applicant's statement that claims 9-15 read on the elected species. *Currently*, no claims are deemed to be generic.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3634

Claims 9, 11, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the phrase "may be" in line 19 of claim 9, renders the claim indefinite. *In particular*, what "may be" to one, "may not be" to another. *Thus*, the metes and bounds of the claim cannot be properly ascertained since one would not know whether the recitation proceeding the phrase "may be" is being claimed/required or not.

Claim 11 is rendered indefinite by the language thereof. In particular, it is unclear whether the upper and lower pins together or separately each have a bend. *For example*, --each-- could be inserted before "comprise" in line 2.

Claim 14 is rendered indefinite by the language thereof since this appears to be contradictory as to what is shown in the drawings, i.e., the elements listed in claim 14 are made from wire but not a "single" wire structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,205,421 (Bustos '421) in view of U.S. Patent No. 5,133,463 (Merl '463).

Art Unit: 3634

Bustos '421 discloses a shelving unit comprising a generally planar shelf (7) comprising at least two attachment members (one is shown in Figures 4-6) extending from the shelf (7) and each comprising a top mounting rail (56) and a bottom mounting rail (57); an upper mounting pin (78) extends downwardly from the rear edge of the top mounting rail (56) and a lower mounting pin (including the portion of 88 between 88b and 88a) extends downwardly from the rear edge of the bottom rail (57) whereby the pins (78 and 88) are offset from one another (see Figure 6); a support frame comprising two vertical members (6a and 6b) each comprising a plurality of evenly spaced openings (79) formed in a front receiving surface; the shelf (7) is mountable to the support frame (see Figure 1) by inserting the upper pins (78) into first openings (79) in the members (6a and 6b) and the lower pin (88) is selectively able to be positioned against the front receiving surface (see Figure 5) so that the shelf is in a substantially horizontal orientation of inside second openings (79) causing the shelf to be oriented in a substantially forward sloping orientation (Figure 6); *with respect to claim 10*, relative positioning of the lower pin (88) determines the angle of forward slope of the shelf; *with respect to claim 11*, each pin (78 and 88) comprises a single bend; and *with respect to claim 15*, the top rail (56) is longer than the bottom rail (57).

The claims differ from Bustos '421 in requiring: (a) the depth of the shelf to be able to be increased/decreased (claim 9); (b) the front edge of the shelf to be bent upwards at a right angle (claim 12); (c) the front edge of the shelf to include a frame (claim 13); and (d) the shelf, rails, and pins to include a single wire structure (claim 14).

Art Unit: 3634

Merl '463 teaches an adjustable wire shelf whereby the depth *may* be adjusted and comprising a front edge that bends upwards at a right angle whereby a frame (10) could be used for displaying indicia, such as a sticker.

With respect to (a), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the unit of Bustos '421 with the adjustable wire shelf as taught by Merl '463, for increased storage capabilities and capacity, since the depth of the shelf can be increased or decreased to accommodate the quantity of items stored thereon.

With respect to (b) and (c), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have had the shelf having an upturned front edge defining a frame, as taught by Merl '463 for increased ease to the consumer since the edge would store and hold items placed therein while displaying information thereabout.

With respect to (d), *insomuch as the claims are best understood (in view of the Section 112, 2nd paragraph rejections advanced above)*, Merl '463 and Bustos '421 together define the claimed structure, thereby increasing ease in economy and manufacture.

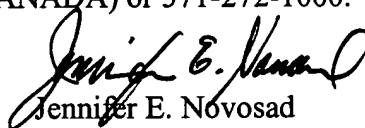
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

June 21, 2006